



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

CITY OF MANCHESTER :
:
Complainant :
:
v. : CASE NO. P-0706-27
:
MANCHESTER ASSOCIATION OF : DECISION 95-36
POLICE SUPERVISORS (MAPS) :
:
Respondent :
:

APPEARANCES

Representing City of Manchester:

David Hodgen, Chief Negotiator

Representing Manchester Assoc. of Police Supervisors (MAPS):

Philip J. Doherty, Chief Negotiator

Also appearing:

Mark Driscoll, Assistant Chief, M. P. D.

BACKGROUND

The City of Manchester (City) filed unfair labor practice (ULP) charges against the Manchester Association of Police Supervisors (MAPS) Union on March 3, 1995, alleging a violation of RSA 273-A:5 II (f) relating to a breach of contract by improperly attempting to arbitrate a non-arbitrable matter. The Union filed its answer on March 20, 1995 after which this case was heard by the PELRB on May 2, 1995.

FINDINGS OF FACT

1. The City of Manchester is a "public employer" of police supervisors and other employees within the meaning of RSA 273-A:1 X.

2. The Manchester Association of Police Supervisors (MAPS) is the duly certified bargaining agent for police supervisors employed by the City.
3. The City and MAPS have been parties to a collective bargaining agreement (CBA) for the period ending December 31, 1991. This CBA was followed by a Memorandum of Understanding of Proposed Settlement (MOU), signed on September 27, 1994, for the period January 1, 1992 through June 30, 1994. City Exhibit B, page 4. Thereafter the parties signed a new CBA on March 6, 1995 (MAPS) and April 10, 1995 (Aldermanic Negotiating Team) for the period January 1, 1992 through June 30, 1994, to be effective "upon ratification of the respective parties." City Exhibit No. 2. This last document, the 1992-94 CBA, was approved by the Police Commission on September 28, 1994 and by the Board of Mayor and Alderman on October 18, 1994.
4. On June 7, 1994, the Board of Mayor and Aldermen (BMA) passed a resolution "Abolishing Step/ Longevity Increases for all City Employees in the Fiscal Year 1995 Budget." City Exhibit A.
5. Both of the CBA's, 1989-91 and 1992-94, contained provisions for the payment of step and longevity increases. The City had continued to pay those increases, maintaining the status quo under the expired agreements, until the commencement of the 1995 fiscal year on July 1, 1994. Thereafter, it stopped doing so in accordance with the resolution of June 7, 1994.
6. On October 20, 1994, Lt. Phil Doherty, the chief negotiator, grievant and union representative in this case, attained more than twenty years of service with the Manchester Police Department. Under both of the expired CBAs, he would have been entitled to an increase in compensation, in the form of a longevity increase, on that date. When he sought that increase, it was denied under the provisions of the June 7, 1994 resolution by the BMA.
7. On November 11, 1994, Robert Duffey, President of MAPS, wrote to Assistant Chief Mark Driscoll complaining that Doherty had not received his longevity increase. Chief Peter Favreau responded to Duffey by letter of November 23, 1994 saying that the matter was "beyond my control to

resolve" because "the Board of Mayor and Aldermen has voted to withdraw that benefit from all Manchester city employees." Chief Favreau suggested, "should you wish to pursue this issue, that you take it to the next step of the grievance procedure."

8. Between November 23, 1994 and January 24, 1995, MAPS filed for arbitration on this issue. On January 30, 1995, David Hodgen, the City's Chief Negotiator, wrote Duffey saying that he, Hodgen, had received a copy of the demand for arbitration and that he objected to it because MAPS had filed with the American Arbitration Association (AAA) and the City had not agreed to use that agency to administer this case. He also told Duffey, that the City's position was that the case was not arbitrable and that the City would be filing unfair labor practice (ULP) charges to that effect.
9. On March 3, 1995 the City filed this ULP alleging that MAPS violated RSA 273-A:5 II (f) by wrongfully attempting to arbitrate the payment of Doherty's longevity step payment. MAPS filed an answer relying on provisions of the September 27, 1994 MOU which said:

The parties understand that in ratifying this Agreement, the City's position is that ratification does not obligate the City to pay step (longevity) raises after June 30, 1994. Further, the Union disagrees with the City's position regarding pay step (longevity raises) and is free to pursue this issue in another forum.

DECISION AND ORDER

Under Nashua v. Murray, 128 NH 417 at 423 (1986), the PELRB has responsibility for addressing wrongful demands to arbitrate because such demands, if substantiated, constitute unfair practices within the original jurisdiction of the board. In this case, the parties' agreed upon grievance and arbitration procedure, as referenced in City Exhibit F, called for them to submit grievances to arbitration through "a mutually agreed upon neutral arbitration and conciliation service." When MAPS unilaterally sought the service of the AAA to administer this case, they evaded that responsibility, as they had agreed, of finding a mutually agreed upon neutral agency to administer the processing of the case through arbitration. The City was then no longer obligated to proceed with a process which was outside the provisions of the CBA,

as it continued to be observed after the expiration of the 1992-94 agreement.

In Appeal of the City of Nashua, 132 NH 699 (1990), the Supreme Court said the parties' agreement "determines the jurisdiction of the arbitrator over the subject matter of the dispute." Here, we can find no agreement to arbitrate, or, more appropriately, to proceed with processing the agreement to arbitration, absent agreement on a mutually acceptable arbitration service. Thus, there is no agreement to arbitrate.

Finally, MAPS relies on the language of the MOU (Finding No. 10, above) for authority to arbitrate. Were the second of the two cited sentences standing alone, we might be inclined to agree. In this case, the Union's ability to pursue step and longevity increases "in another forum" follows a sentence in which the City has disclaimed its obligation to pay such monies after June 30, 1994 MAPS was notified of and a signatory to that disclaimer. Again, we must find no agreement to arbitrate.

Because of the ambiguous language of the MOU, we find no intentional violation of RSA 273-A: II (f) by MAPS's attempt to arbitrate. Conversely, we find no basis for the parties to proceed to arbitration on the pending grievance absent their both following their negotiated procedures for doing so. The ULP is dismissed.

So ordered.

Signed this 25th day of MAY, 1995.


EDWARD J. HASELTINE, Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members Richard Roulx and E. Vincent Hall present and voting.